

RECORDATION NO. 13442-A

JAN 21 1982 -1 50 PM

INTERSTATE COMMERCE COMMISSION

850 THIRD AVENUE  
NEW YORK, N. Y. 10022

RECORDATION NO. 13442

MELVIN S. SLADE  
STUART M. PELLMAN  
FREDERICK R. BIEHL  
JEFFREY A. MOROSS  
JOHN F. TRIGGS

JEFFREY L. GLATZER  
MONA L. LIPP  
J. ANDREW RAHL, JR.  
RONALD B. RISDON  
MICHAEL W. STAMM

2-021A053

No.

JAN 21 1982

Date

Fee \$ 100.00

ICC Washington, D. C.

JAN 21 1982 -1 50 PM

INTERSTATE COMMERCE COMMISSION

January 19, 1982

TELEPHONE  
(212) 371-2600  
TELECOPIER: (212) 371-2651  
TELEX: 640336  
CABLE: TRILAW-NYK

Office of the Secretary  
Recordation Office  
Interstate Commerce Commission  
Twelfth and Constitution Avenue, N.W.  
Washington, DC 20423

Re: Recordation and Filing of Lease of Railroad Equipment between Walter E. Heller & Company and Emons Industries, Inc. and Related Documents pertaining to 99 Boxcars Numbered CPAA 208676 through 208774, inclusive (the "Equipment")

Dear Sir:

In accordance with the provisions of Section 11303 of the Revised Interstate Commerce Act, 49 U.S.C. §11303, and Part 1116 of Title 49 of the Code of Federal Regulations, we request that the enclosed documents be recorded and filed by the Interstate Commerce Commission (the "Commission").

A. Description of the Documents and the Parties Thereto

Enclosed herewith is one original of the documents listed below. We request that each document be recorded and filed in the order listed below.

1. Lease of Railroad Equipment, dated as of July 28, 1981, between Walter E. Heller & Co., as lessor ("Heller"), and Emons Industries, Inc., as lessee ("Emons").

2. Security Agreement, dated as of July 28, 1981, between Heller and Emons.

Copy to file - for CT Kappeler

January 19, 1982

Office of the Secretary  
Interstate Commerce Commission  
Page 2

The names and addresses for the parties to the transaction are:

Emons Industries, Inc.  
490 East Market Street  
York, Pennsylvania 17403

Walter E. Heller & Company  
105 West Adams Street  
Chicago, Illinois 60603

B. Procedural Matters

It is hereby respectfully requested that each of the following names be inserted in the Commission Index established pursuant to Section 1116.5(c) of Title 49 of the Code of Federal Regulations.

1. Emons Industries, Inc.
2. Walter E. Heller & Co.

A check in the amount of \$100 has been enclosed with this letter of transmittal to cover the recordation fee.

Please stamp and return the enclosed copy of this letter of transmittal.

If there are any questions with respect to the enclosed or the transactions described therein, please telephone Michael W. Stamm of this office.

Very truly yours,

  
SLADE PELLMAN & BIEHL

Enclosures

**Interstate Commerce Commission**  
Washington, D.C. 20423

OFFICE OF THE SECRETARY

Michael W. Stamm  
Slade Pellman & Biehl  
850 Third Avenue  
New York, N. Y. 10022

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 1/21/82 at 1:50PM, and assigned re-recording number(s). 13442, 13442-A, 8907-A, 8907-B, 10548-C, 10548-D, & 13217-B

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

JAN 21 1982 - 1 50 PM

LEASE OF RAILROAD EQUIPMENT INTERSTATE COMMERCE COMMISSION

Agreement entered into as of the 28<sup>th</sup> day of July, 1981, by and between WALTER E. HELLER & COMPANY, a Delaware corporation whose address is 105 West Adams Street, Chicago, Illinois 60603 ("Lessor"), and EMONS INDUSTRIES, INC., a New York corporation whose address is 490 East Market Street, York, Pennsylvania 17403 ("Lessee").

W I T N E S S E T H :

Pursuant to a Lease Agreement dated as of June 15, 1981 between North American Car Corporation, Canadian Railcar Division ("NAC") and Canadian Pacific Limited ("CP"), a copy of which is attached hereto as Exhibit A (the "CP Sublease"), NAC has agreed to lease to CP, and CP has agreed to hire from NAC, two hundred seventy-five (275) Class "XP" boxcars for a term which commences on the date of CP's acceptance of such boxcars and terminates upon the expiration of the 15th Lease Year (as provided in Paragraph 2(a) of the CP Sublease), subject to CP's right to extend such term for an additional seven (7) years (as provided in Paragraph 2(b) of the CP Sublease).

Pursuant to a Lease Agreement dated as of June 24, 1981, between the Lessee and NAC, a copy of which is attached hereto as Exhibit B (the "NAC Sublease"), the Lessee has agreed to lease to NAC, and NAC has agreed to hire from the Lessee, two hundred seventy-five (275) Class "XP" boxcars for a term co-extensive with the term (including any renewal term) of the CP Sublease.

The Lessor owns the Cars (as such term is defined below) and desires to lease the Cars to Lessee on the terms and conditions set forth in this Lease, with the understanding that the Cars will be subleased (i) by the Lessee to NAC pursuant to the NAC Sublease and (ii) by NAC to CP pursuant to the CP Sublease.

NOW, THEREFORE, in consideration of the premises, the parties hereto agree:

1. Certain Definitions: In addition to the words and terms defined elsewhere in this Lease, the following terms shall have the following meanings when used herein:

The "Cars" shall mean the ninety-nine (99) Class "XP" railroad boxcars more fully described on Schedule I attached hereto.

"Maximum Monthly Rent" for any given month shall mean an amount equal to the sum of (a) the product derived by multiplying \$222.62 times the number of Cars which were subject to this Lease during all of such month plus (b) any Revenue Deficit (as such term is defined in Section 4(a) below) carried forward to such month, as provided in the second and third sentences of Section 4(a) below.

"Net Car-Hire Revenues" for any month shall mean all revenues actually received by the Lessee pursuant to the NAC Sublease (other than any amounts received in such month by the Lessee pursuant to the NAC Sublease which represent indemnification payments, or payments made by CP, NAC or others as settlements for any damage to or destruction of any boxcar subject to the NAC Sublease or any payment made by NAC pursuant to Section 10 of the NAC Sublease) less an amount equal to the sum of (i) any costs, expenses, taxes, assessments or liabilities which are payable by Lessee pursuant to Section 5 of the NAC Lease or are otherwise incurred by Lessee in connection with either the use, maintenance, repair, replacement or reconstruction of any boxcar subject to the NAC Sublease or the enforcement by the Lessee of its rights under the NAC Sublease or NAC's rights under the CP Sublease plus (ii) any such revenues which NAC is entitled to retain pursuant to Paragraph 3 of the NAC Sublease.

2. Lease and Hire: Lessor hereby lets to Lessee, and Lessee hereby hires from Lessor, the Cars for the term of this Lease.

3. Term of Lease: The term of this Lease as to each Car shall begin on the date of the acceptance of such Car by CP in accordance with the CP Sublease and shall terminate on the date of any termination of the CP Sublease with respect to such Car.

4. Rentals: (a) The Lessee shall pay to the Lessor, on a monthly basis in accordance with Section 4(b) below, as rental for the Cars hereunder, an amount which is equal to the Net Car-Hire Revenues actually received by the Lessee pursuant to the NAC Sublease for the preceding month, but which in no event is in excess of the Maximum Monthly Rent applicable to such month. In the event that Net Car-Hire Revenues actually received by the Lessee in any month are less than the Maximum Monthly Rent applicable in such month, an amount equal to the difference between such Net Car-Hire Revenues and such Maximum Monthly Rental (a "Revenue Deficit") shall be added to the Maximum Monthly Rental for the succeeding month. Any such increase in Maximum Monthly Rental due to a Revenue Deficit shall be carried forward cumulatively to increase the Maximum Monthly Rental payable in

future months until discharged through the payment of rent. The Lessor shall not be entitled to recover any Revenue Deficit by carrying such Revenue Deficit back to any month prior to the month in which such Revenue Deficit arose. The Lessee shall be permitted to retain (i) except as provided in Section 9 below, all revenues received by it pursuant to the NAC Sublease other than Net Car-Hire Revenues, and (ii) all Net Car-Hire Revenues received in any month which are in excess of the Maximum Monthly Rental payable in such month.

(b) The rent payable pursuant to Section 4(a) above with respect to any month shall be paid by the Lessee within fifteen (15) days after the receipt by the Lessee of Net Car-Hire Revenues with respect to such month.

5. Net Lease: This Lease is a net lease. All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state, Federal or foreign taxes (other than (a) any United States Federal income tax, and (b) all state, city or local income taxes or franchise taxes measured by net income based on such receipts) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called "Impositions") hereafter levied or imposed upon or in connection with or measured by this Lease, all of which Impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein, provided, however, that the Lessee shall not have any liability to the Lessor for any loss incurred by the Lessor due to the recapture of any investment tax credits or other loss of tax benefits.

The Lessee will also pay or cause to be paid all Impositions which may be imposed upon any Car or for the use or operations thereof or upon the earnings arising therefrom (except as provided above), and will use its best efforts to keep at all times all and every part of such Car free and clear of all Impositions which might in any way affect the title of the Lessor or result in a lien upon any such Car; provided, however, that the Lessee shall be under no obligation to pay any Impositions of any kind so long as it, NAC or CP is contesting in good faith and by appropriate legal proceedings such Impositions and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder. If any Impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of an invoice therefor.

6. Delivery of Cars: (a) The Cars shall be delivered to CP by Lessor, at Lessor's expense, at an interchange point on CP's trackage specified by CP.

(b) Lessor warrants to Lessee that at the time of the delivery thereof to CP in accordance with Section 6(a) above each Car will be (i) in good operating condition and (ii) in such condition as shall meet all applicable federal, state or local laws or regulations and the applicable rules of the Association of American Railroads.

7. Maintenance and Repair: Lessee, at its expense, shall maintain, or shall cause NAC and CP to maintain, each Car in good operating condition and repair during the term of this Lease, ordinary wear and tear excepted.

8. Identification Marks: The Lessor will cause the Cars to be restenciled, at Lessor's expense, with (i) the identifying numbers shown on Schedule I, (ii) an "XP" mechanical designation and (iii) such other insignia as Lessee, NAC or CP may reasonably request.

The Lessee will not change the identifying number of any Car except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been submitted to Lessor, and filed, recorded and deposited by the Lessee in all public offices where the Lease shall have been filed, recorded and deposited.

9. Casualty Occurrences: In the event that any Car shall be or become lost, stolen, destroyed, or irreparably damaged, from any cause whatsoever (any such occurrence being hereinafter called a "Casualty Occurrence") during the term of this Lease, Lessee shall promptly and fully notify Lessor with respect thereto and shall pay to Lessor an amount equal to any amount received by the Lessee as settlement in connection with such Casualty Occurrence.

10. Return of Cars: On termination of this Lease with respect to all or any of the Cars, Lessee will return such Car or Cars to the Lessor at a place on the trackage of CP or at a place otherwise mutually agreed upon by the Lessor and Lessee.

11. Assignment - Use and Possession: Lessee will not assign, transfer, encumber or otherwise dispose of its leasehold interest under this Lease, the Cars or any part thereof, or sublet the Cars or place any of the Cars in assigned service without the consent of the Lessor in writing first obtained, except that Lessee may sublease the Cars to NAC pursuant to the NAC Sublease, and NAC may sublease the Cars to CP pursuant to the CP Sublease.

10. Record-keeping: All records of payments, charges, and correspondence related to the Cars shall be separately recorded and maintained by Lessee in a form suitable for reasonable inspection by Lessor from time to time during regular business hours of Lessee. Lessee shall supply Lessor promptly with such reports regarding the use of the Cars as Lessor may reasonably

request and with copies of all records and correspondence relating to the Cars received by Lessee. All such record keeping shall be at Lessee's expense.

11. Possession and Use: So long as Lessee shall not be in default under this Lease, Lessee shall be entitled to the possession, use and quiet enjoyment of the Cars in accordance with the terms of this Agreement and in the manner and to the extent the Cars are customarily used in the railroad freight business. Lessee agrees that to the extent it has physical possession and can control use of the Cars, the Cars will at all times be used and operated under and in compliance with the laws of the jurisdiction in which the same may be located and in compliance with all lawful acts, rules and regulations and orders of any governmental bodies or officers having power to regulate or supervise the use of such property, except that either Lessor or Lessee may in good faith and by appropriate proceedings contest the application of any such rule, regulation or order in any reasonable manner at the expense of the contesting party.

12. Defaults; Remedies: If during the term of this Lease one or more of the following events ("Events of Default") shall occur:

(a) Default shall be made in the payment when due of any rent herein provided and such default shall continue for a period of ten (10) days; or

(b) Lessee shall attempt to remove, sell, transfer, encumber or sublet (other than pursuant to the NAC Sublease or the CP Sublease) any Car; or

(c) (i) Default shall be made in the observance or performance of any other covenants, conditions and agreements on the part of Lessee contained herein, or (ii) default shall be made by NAC or CP in the payment when due of any rent to be paid pursuant to the NAC Sublease or the CP Sublease, or (iii) an Event of Default shall exist under the NAC Sublease or CP Sublease which directly, materially and adversely affects the Cars, and any such default shall continue for fifteen (15) days after written notice from Lessor to Lessee specifying the default and demanding the same to be remedied; or

(d) A proceeding shall have been instituted in a court having jurisdiction in the premises, seeking a decree or order (i) for relief in respect of Lessee in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect or (ii) for the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of Lessee or for any substantial part of its property, or (iii) for the winding up or liquidation of the affairs of Lessee; and either (I) any such proceeding shall remain undismissed or unstayed and in effect for a period of 60 consecutive days or (II) such court shall enter a decree or order



granting the relief sought in such proceeding; or

(e) Lessee shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, shall consent to the entry of an order for relief in an involuntary case under any such law, or shall consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar official of Lessee or for any substantial part of its property, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any corporate action in furtherance of any of the foregoing;

then, in any such case, Lessor at its option may:

A. Proceed by appropriate court action or actions either at law or in equity to enforce performance by Lessee of the applicable duties and obligations of Lessee under this Lease or, if such default is caused solely by Lessee's action or inaction, to recover from Lessee any and all damages or expenses, including reasonable attorneys' fees, which Lessor shall have sustained by reason of such default or on account of Lessor's enforcement of its remedies hereunder; or

B. By notice in writing to Lessee, terminate this Agreement, whereupon all right of Lessee to the use of the Cars shall absolutely cease and terminate as though this Agreement had never been made, and thereupon, Lessor may by its agents and without notice to Lessee enter upon the premises of Lessee or other premises where the Cars may be located and take possession of all or any such Cars and thenceforth hold, possess and enjoy the same free from any right of Lessee, or its successors or assigns, to use the Cars for any purpose whatever.

13. Indemnities. Lessee agrees to indemnify and hold harmless Lessor from and against all losses, damages, injuries, claims and liabilities of whatsoever nature and regardless of the cause thereof arising out of or in connection with the use or operation of the Cars by NAC or CP during the term of this Lease, but only to the extent Lessee shall obtain recovery from NAC or CP as a result of NAC's indemnification of Lessee under the NAC Sublease.

14. Obligations Suspended: In the event the performance in whole or in part of the obligations of either party under this Lease is hindered, interrupted, or prevented by war, strikes, lockouts, fire, acts of God, or by other similar or different acts of civil or military authorities, or by any cause beyond the reasonable control of the defaulting party, whether similar to the causes herein specified or not, the obligations of such party shall be suspended to the extent of and for the time that performance thereof is prevented or affected by such hindrance, interruption, or prevention, but due diligence shall be observed

by such party in resuming performance of its obligations, after removal of the interrupting cause.

15. Prior Understandings: Prior understandings and agreements between the parties with respect to the Cars are merged herein, and all rights of the parties in respect of such Cars shall be governed by this Lease.

16. Lessee's Rights: Lessee acknowledges and agrees that it has not obtained, and by the execution hereof it does not obtain, and by payments and performance hereunder it will not obtain, any title to the Cars nor any property right or interest, legal or equitable therein, except solely as Lessee hereunder. Lessee shall keep the Cars free from any encumbrance or lien which may be equal to or superior to Lessor's rights or which may be a cloud upon or otherwise affect Lessor's title.

17. Successors and Assigns: Covenants herein shall inure to or bind each party's successors and assigns; provided, that notwithstanding the assignment of this Lease by the Lessor, all obligations of the Lessor to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns against the Lessor and not against any assignee or successor assignee of the Lessor's interest in the Lease.

18. Notices: Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first class, postage prepaid, addressed as follows:

(a) If the Lessee:

490 East Market Street  
York, Pennsylvania 17403  
Attention: Treasurer

(b) If the Lessor:

105 West Adams Street  
Chicago, Illinois 60603  
Attention: Donald E. Bayston

or addressed to either party at such other address as such parties shall hereafter furnish to the other party in writing.

19. Severability, Effect and Modifications of Lease: Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

20. Waiver and Modification: This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the Cars and supersedes all other arrangements, oral or written, with respect to the Cars. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Lessor and Lessee.

21. Execution. This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Although this Lease is dated as of the date set forth above for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgements hereto annexed.

22. Amendment of Lease. Lessee shall not consent to the amendment, modification or cancellation of the NAC Sublease or CP Sublease without the prior written consent of Lessor.

23. Termination of Surplus Cars. In the event that Lessee shall at any time or from time to time during the term of this Lease have the right to cause NAC to remove from the CP Sublease any boxcars determined to be surplus boxcars in accordance with Section 8(b) of the CP Sublease, such right shall be exercised in accordance with the following procedure:

(a) Lessee shall deliver to Lessor a written notice (a "Notice of Proposed Termination") specifying (i) the total number of boxcars which may be removed from the CP Sublease and (ii) the identifying numbers of the boxcars which Lessee proposes to remove from the CP Sublease;

(b) If Lessee has not received from Lessor a written objection to a Notice of Proposed Termination within fifteen days of Lessee's delivery of such notice, Lessee shall be permitted to remove from the CP Sublease the boxcars specified in the Notice of Proposed Termination;

(c) If Lessor delivers to Lessee within fifteen days of Lessor's receipt of a Notice of Proposed Termination a written objection to such notice, and Lessor and Lessee are unable, for a period of fifteen days after the delivery of such objection, to agree as to the boxcars to be removed from the CP Sublease, then (i) Lessor shall have the option to require Lessee to remove from the CP Sublease a number of Cars owned by Lessor which is not in excess of the number which bears the same relation to the total number of boxcars which may be removed from the CP Sublease as the total number of Cars then owned by the Lessor and subject to the CP Sublease bears to the total number of boxcars then subject to the CP Sublease and (ii) Lessee shall have the option to remove from the CP Sublease as many additional boxcars not owned by Lessor as is permitted by the CP Sublease, after

giving effect to any exercise by Lessor of the option granted above.

24. Substitution of Cars. Lessee will not allow the substitution of Lessor's Cars without the prior written consent of Lessor.

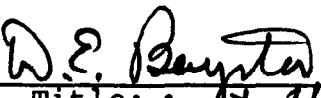
25. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Illinois, provided, however, that the parties shall be entitled to all rights conferred by Section 11303 of the Revised Interstate Commerce Act.

IN WITNESS WHEREOF, the parties have duly executed this Lease the day and year first above written.

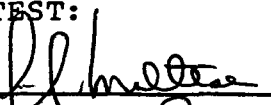
ATTEST:

  
Walter E. Heller

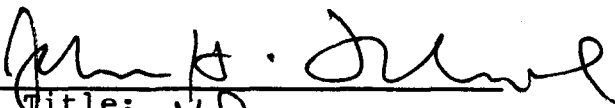
WALTER E. HELLER & COMPANY

By   
Title: asst. Vice President

ATTEST:

  
F. H. Miller  
Secy.

EMONS INDUSTRIES, INC.

By   
Title: V.P.

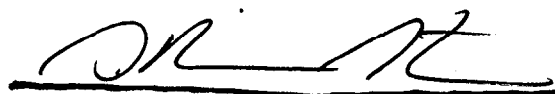
STATE OF ILLINOIS )  
 )  
COUNTY OF COOK ) ss.:

On the 28th day of July, 1981, before me personally appeared D.E. Bayston, to me personally known, who, being by me duly sworn, says that he is the Asst. Vice President of WALTER E. HELLER & COMPANY, Lessor in the foregoing Lease of Railroad Equipment, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

  
Notary Public

ILLINOIS  
STATE OF ~~ILLINOIS~~ )  
 )  
COUNTY OF COOK ) ss.:

On the 28th day of July, 1981, before me personally appeared John H. Rubel, to me personally known, who, being by me duly sworn, says that he is the Vice President of EMONS INDUSTRIES, INC., Lessee in the foregoing Lease of Railroad Equipment, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

  
Notary Public

SCHEDULE I

<u>Description of Equipment</u>	<u>Quantity</u>	<u>AAR Mechanical Designation</u>	<u>Present Car Numbers</u>	<u>Car Numbers To Be Remarked</u>	<u>Umler Value For Each Car</u>
70 ton - 50'6" steel, single sheath, outside stake railroad boxcar with rigid underframe	99	XP	PICK 55300-55380 55382-55399	CPAA 208676-208774	\$30,600

7/28/81